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10/522,312	01/25/2005	Hamza Benderdouch	0501-1118	7583

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EXAMINER

GEHMAN, BRYON P

ART UNIT	PAPER NUMBER
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3728

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/522,312

Applicant(s)

BENDERDOUCH, HAMZA

Examiner

Bryon P. Gehman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-25 is/are rejected.
7) ☒ Claim(s) 4-7, 12, 15-17, 23 and 24 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 4/19/05.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 1, lines 1-3 recites the broad recitation "paint brush", and the claim also recites "a transverse spatula made of absorbent material" which is the narrower statement of the range/limitation. See also claim 21.

In claim 1, line 2, "of the type" is indefinite as to the metes and bounds that renders the "type" of a transverse application spatula. In line 3, "comprising an

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element..." is indefinite which antecedent is being referred back to. In line 6, "the pigments contained..." lacks antecedent basis. In line 6, "if appropriate" renders the claim indefinite, as it is indefinite what structure renders appropriateness to the arrangement. In lines 6-7, "said wetting liquid", as no wetting liquid per se has been "said" as a positive element of the claimed invention.

Claim 2 depends from itself, which is in error. In line 4, the reference numeral "(8)" is inconsistent with claim 1, as in claim 1 the numeral references the material and in the instant claim it references the element.

In claim 3, line 2, "the wetting element" lacks antecedent basis or is inconsistent with prior terminology.

In claim 5, line 2, "the reception vessel" lacks antecedent basis or is inconsistent terminology. In line 3, "the wetting means" lacks antecedent basis.

In claim 6, line 2, "wetting/drying" is indefinite as the meaning of the slash defining an alternative or combination. Also in line 2, within should be a single word. In line 4, "said studs" lack antecedent basis from parent claims 5, 4 and 1.

In claim 7, line 2, "the lid (7)" is confusing, as in claim 6, the vessel appears designated by the numeral "7".

In claim 8, lines 4-5, the phrase "each side by side a paint surface" does not make sense.

In claim 9, lines 3-4, no paint brush has been positively defined to distinguish "said paint brush".

In claim 12, line 2, "stops (62)" is inconsistent with the previous "stops (61, 62)" and "stops lack antecedent basis, as claim 12 does not depend from claim 9. In lines 5-6, the referenced fastening means lacks antecedent basis, as claim 12 depends from claims 10, 8 and 1, and the referenced fastening means are defined in discrete claim 11.

In claim 13, line 3, "groove/slide type" is indefinite, as the meaning of the slash is indefinite and the scope of "type" is indefinite. Also, it is improper to rely on reference numerals to distinguish "fastening means". It should be stated --some of the fastening means (22, 30) are grooves and slides--.

In claim 14, "locking type" is also indefinite as to its scope, and reference numerals are again being relied on. The phrasing should be --some of the fastening means (100, 101) are locking means--.

In claim 15, line 2, "the support" is indefinite, as plural discrete supports have been previously defined in claim 11. Similarly in line 5, "the paint block" lacks basis for one particular paint block. In line 5, "the detachable lateral stop" lacks antecedent basis from parent claims 11, 10, 8 and 1. In line 9, "the fastening means" is indefinite, as apparently not all previously defined fastening means are being referred to (22; 100; 101; not 30) and the reference numerals can not be employed to limit the claimed subject matter.

In claim 16, line 2, "groove (22)" should be followed by a comma. In lines 3-4, "the gripping tab end" is indefinite, and should be --the gripping tab end of the base plate-- to be clear.

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In claim 17, line 6, "the stop 36)" lacks antecedent basis from parent claims 11, 10, 8 and 1. In line 7, "the groove (22)" similarly lacks antecedent basis.

In claim 20, lines 4-5, "said paint take-up channel " lacks antecedent basis from parent claims 8 and 1, as does "said paint area" in line 6.

In claim 21, line 4, "absorbent material" should be followed by a comma. In lines 4-5, "one of the extended edges of which" lacks antecedent basis. In line 5, the reference numeral "(58)" is discrete from any referenced part so as to be indefinite. In line 8, "the "plane" of the handle lacks antecedent basis, as not all handles are planar.

In claim 23, line 2, "formant" is indefinite as to its meaning. In line 5, "the bend" lacks antecedent basis.

In claim 24, line 2, "the core (53)" is inconsistent with claim 23, where the rigid material is designated by "(23)". In line 3, "take-up edge (58)" should be followed by a comma. In line 5, "this latter" is indefinite as to which antecedent is being referred to. In line 6, "said thicker edge" is indefinite, as the same edge has now been given two different names, "thicker edge" and "back edge".

In claim 25, line 3, the metes and bounds of "the clamp type" is indefinite, as it is unclear what renders a clamp "type" such.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Roundy (6,530,470). Claims 1, 3, 8-11, 13-14 and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Szekely (5,318,171). Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Keith (5,244,090). Claims 1, 3 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Crawford (3,786,913). Each discloses a wetting vessel (10; 11; 10; A; respectively) comprising an element (28; 12; 62; 26) made of absorbent material and intended to be saturated with wetting fluid that allows decantation should it be squeezed or turned upside down.

As to claim 2, Roundy and Keith each disclose projecting studs (24; 46) in combination with the absorbent element defining part of the overall decantation means.

As to claim 3, each discloses the element made of absorbent material made of an absorbent and filtering material.

As to claim 8, Szekely and Crawford each disclose the wetting vessel as part of a paint box (1; A and B) provided with a series of paint blocks (6; 2).

As to claims 9 and 10, Szekely discloses stops (walls of 13) disposed to define a channel surrounding the paint blocks, which are interchangeable.

As to claims 11 and 13-14, Szekely discloses the shapes of the paint blocks and supports (14) include fastening means (15) per a groove shape and a locking feature.

As to claims 18 and 19, Szekely discloses paint brushes of various sizes, each brush provided as a spatula (8-10) covered with an absorbent material.

As to claim 20, Szekely discloses various portions that may be characterized as plates (1; 11, 13) which are molded in one piece.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 21-22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Szekely in view of Karnes (2,936,473). Karnes discloses a paint brush made of two parts, a first part forming an application spatula (12) with a paint take-up edge (at 25) and a second part with a handle (11) including a fastener with a continuous U-shaped section as a fastener (14-13-14). To modify the paint box of Szekely employing an alternative paint brush similar to that of Karnes would have been obvious in order to employ a refreshable spatula paint brush, as suggested by Karnes.

As to claim 22, Karnes discloses the paint brush of separable parts.

As to claim 25, the fastener (14-13-14) is a clamping structure.

7. Claims 4, 12, 15, 17 and 23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to

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include all of the limitations of the base claim and any intervening claims. Dependent claims 5-7, 16 and 24 would also then be allowable.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are wetting vessels and paint boxes associated therewith,

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Tuesday through Thursday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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A handwritten signature in black ink, appearing to read 'Bryon P. Gehman', with a stylized, cursive script.

Bryon P. Gehman
Primary Examiner
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BPG